Office-Supreme Court, U.S.
FILED
MAY 22 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1750

In the Supreme Court of the United States

OCTOBER TERM, 1980

31.72 ACRES OF LAND, MORE OR LESS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

CAROL E. DINKINS
Assistant Attorney General

EDWARD J. SHAWAKER
THOMAS L. RIESENBERG
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether a possibility of reverter ripened into title when jurisdiction of property granted to the State of Michigan in 1920 for use as a "public state park" was transferred to the United States for continued use as a park.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 4

Conclusion 5

TABLE OF AUTHORITIES

Cases:

Baldwin Manor, Inc. v. *City of Birmingham,* 341 Mich. 423, 67 N.W. 2d 812 4

Evans v. *Abney,* 396 U.S. 435 ..... 4, 5

Evans v. *Newton,* 392 U.S. 296 4

Constitution and statutes:

United States Constitution, Fourteenth Amendment 4

Act of October 21, 1970, 16 U.S.C. 460x *et seq.* 2

1974 Mich. Pub. Acts. No. 359, Mich. Comp. L. § 3.901 (Mich. Stat. Ann. § 13.766(1) *et seq.*) (Callaghan 1980 Supp.)..... 2

PRECEDING PAGE WAS BLANK

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1750

31.72 ACRES OF LAND, MORE OR LESS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-2a) and of the district court (Pet. App. 3a-18a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 21, 1981. The petition for a writ of certiorari was filed on April 15, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This suit was commenced by the United States in order to determine the validity of the claim of the heirs of David H. Day and Eva E. Day that their reversionary interest in 31.72 acres of land ripened into fee title (Pet. App. 1a). The land at issue is within the boundaries of the Sleeping Bear Dunes National Lakeshore, which was established by the Act of

October 21, 1970, 16 U.S.C. 460x *et seq.* (Pet. App. 2a). The Days had conveyed the land to the State of Michigan in 1920 by a warranty deed that provided that the land was (*id.* at 1a)

> to be used for a public state park, should the same be abandoned for that purpose, it shall revert to the party of the first part, their heirs and assigns.

The State of Michigan authorized the Michigan Department of Natural Resources to convey the subject land by quitclaim deed to the United States. 1974 Mich. Pub. Acts No. 359, Mich. Comp. L. § 3.901 (Mich. Stat. Ann. § 13.766(1) *et seq.*) (Callaghan 1980 Supp.). However, no such deed was executed prior to the commencement of this proceeding (Pet. App. 4a).

On May 1, 1975, the State of Michigan issued a permit granting jurisdiction over the parkland to the National Park Service in connection with the operation of the Sleeping Bear Dunes National Lakeshore. This permit authorized the National Park Service to make use of the property as if a deed had been delivered, although the State did not relinquish title to the property. The term of the permit was for one year and year-to-year thereafter until terminated by delivery of the deed (Pet. App. 5a). The condition precedent to delivery of a deed was the satisfactory removal of the remainderman interest reserved by the Days in the original deed (*id.* at 2a, 5a).

With the exception of certain minor changes such as the removal of some signs, buildings, and fixtures in the park, the United States has left the facilities intact. Operation of the park also remains largely unchanged, with the United States continuing Michigan's policy of charging fees to camp at the park. The park was known as the "D.H. Day State Park" when it was managed by Michigan; it is now

called the "D.H. Day Campground" within the Sleeping Bear Dunes National Lakeshore (Pet. App. 2a, 5a n.1, 17a-18a).

The complaint in this case excepted the interest of the State of Michigan and various easements and, for practical purposes, concerned only the reversionary interest asserted by the heirs of the Days (J.A. 4).[1] After a stipulation of facts was submitted (J.A. 18-23), the heirs filed a motion for partial summary judgment on the ground that the land was no longer being used as a "public state park" and therefore that they held "a reversionary fee simple interest" (J.A. 24-26). The government filed a cross-motion for summary judgment (J.A. 27).

The district court granted the government's motion for summary judgment, holding that the possibility of reverter under the original deed did not ripen into title in favor of the heirs when the State transferred jurisdiction of the park to the United States (Pet. App. 3a-18a). Based on a review of Michigan law (*id.* at 10a-11a) and "exhaustive research * * * [into] the historical context in which the grant was given [to the State of Michigan in 1920]" (*id.* at 2a), the court found that the action of the State in transferring control of the property to the National Park Service did not violate the condition that the Days placed in the 1920 deed for the primary purpose of preserving the land as a public park (*id.* at 10a, 17a-18a).

The court of appeals affirmed by order (Pet. App. 1a-2a). In light of "well-settled Michigan law" (*id.* at 2a), the court of appeals sustained the district court's determination that the transfer of jurisdiction did not interfere materially with the Days' primary intent to make a gift of the land so that the people of the State could enjoy and use the property as a park (*ibid.*).

---

[1] "J.A." refers to the joint appendix filed in the court of appeals.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of the other courts of appeals. Moreover, resolution of this case turns largely on the factual issue of the intent of the Days in 1920, and the only disputed legal issue involves a question of state law. Accordingly, further review is unwarranted.

A long line of Michigan cases relied upon by the district court (Pet. App. 10a) holds that conditions in deeds are strictly construed to prevent forfeiture. Contrary to petitioners' assertion (Pet. 6-11), this well-established principle was not altered by the decision in *Baldwin Manor, Inc.* v. *City of Birmingham*, 341 Mich. 423, 67 N.W. 2d 812 (1954).[2] There, the court held that the building of a highway over parkland constituted a breach of the condition imposed by the donor that the land be used solely for park purposes. In the instant case, on the other hand, the courts below found that the transfer of management of a park from the State to the federal government did not materially or substantially interfere with the grantor's purpose. The holding in this case is not inconsistent with governing state law.

Nor is a different result required by this Court's decision in *Evans* v. *Abney*, 396 U.S. 435 (1970). At issue in that case was a will that conveyed property in trust to a city for use as a public park exclusively by white people of that city. In *Evans* v. *Newton*, 382 U.S. 296 (1966), this Court found that the condition requiring operation of the park on a racially discriminatory basis violated the Fourteenth Amendment to the United States Constitution. The Supreme Court of Georgia then ruled that the testator's condition had become impossible to fulfill, that the trust therefore failed, and that the property consequently reverted by operation of Georgia law to the testator's heirs. This Court, in

---

[2]The district court specifically considered and distinguished the *Baldwin Manor* decision (Pet. App. 10a n.3).

rejecting constitutional challenges to that decision, observed that the state court "did no more than apply well-settled general principles of Georgia law to determine the meaning and effect of a Georgia will" (*Evans* v. *Abney*, *supra*, 396 U.S. at 439). Similarly, the courts in the present case did no more than follow well-established Michigan law in concluding that the condition in the original deed was not violated here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

CAROL E. DINKINS
Assistant Attorney General

EDWARD J. SHAWAKER
THOMAS L. RIESENBERG
Attorneys

MAY 1981

DOJ-1981-05